

REMARKS

The Final Office Action mailed November 14, 2007, has been received and reviewed. Claims 1 through 17, 21, and 23 through 41 are currently pending in the application. Claims 1-17, 21, and 23-41 stand rejected. Applicants propose to amend claims 1, 13, 19, 24, and 29, cancel claims 36-41, and add new claims 43-47. Applicants respectfully request reconsideration of the application with respect to the analysis and proposed amendments presented herein.

Once again, Applicants wish to point out that both the Bachner and the Kizu references were filed and published more than a year after the filing date of the present invention (2/1/2001) and therefore do not qualify as prior art under 35 U.S.C. § 102. However, as both the Bachner and Kizu are continuation applications based on applications that would qualify as prior art under 35 U.S.C. § 102, Applicants have addressed the current rejections on the merits.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on U.S. Patent Application Publication No. 2007/0055762 A1 to Bachner, III et al. in view of U.S. Patent No. 6,549,917 to Pollard

Claims 1 through 11, 19, 21, 23 through 25, 29 through 31, and 36 through 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bachner, III et al. (U.S. Patent Application Publication No. 2007/0055762 A1) in view of Pollard (U.S. Patent No. 6,549,917). Applicants respectfully traverse this rejection, as hereinafter set forth.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) **must teach or suggest all the claim limitations**. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, the Examiner must determine whether there is “an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-1741, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Further, rejections on obviousness grounds “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id* at 1741, quoting *In re Kahn*, 441, F.3d 977, 988 (Fed. Cir. 2006). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the

combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicant's disclosure.

DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co., 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

Regarding claim 1, the Office Action states that Bachner is silent regarding "after the replicating, retaining the first data elements and the second data elements at each of the first and second communication nodes until the first and second data elements are received by an intended archival system **and a command is received from the intended archival system to delete or modify the replicated data elements** from the network." The Office Action also states the Pollard discloses this element by referring to column 9, lines 39-50 of Pollard.

From the title, Pollard is a system for "SYNCHRONIZATION OF HOST COMPUTERS AND HANDHELD REMOTE COMPUTERS." Consequently, it appears to Applicants that Pollard seeks to ensure that data elements on the host computer match data elements on the handheld remote computers. This is apparent from Pollard stating:

"Once the record synchronization with the virtual client computer 62 is complete, record modifications (additions, deletions, and changes) may be up-transferred from the physical handheld client computer 54 to the virtual client computer 62, numeral 32, and down-transferred from the virtual client computer 62 to the physical handheld computer 54, numeral 38, when a physical data channel link is available, thus completing the synchronization.

While Pollard may discuss deleting data elements; however, these deletions always appear to be presented in the context of synchronizing the state of data between the two computers. In other words, synchronization includes deleting data elements on the handheld device if they are deleted on the host device and deleting data elements on the host device if they are deleted on the handheld device.

The present invention, in contrast, seeks to delete data elements on communication nodes other than the archival system once the archival system has received the data elements. To emphasize this distinction Applicants propose to amend claim 1 to include, "the at least one archival system retains the replicated data elements and generates a command to delete the replicated data elements from all other communication nodes using the opportunistic data

transfer protocol when the replicated data elements are received by the at least one archival system.” Support for this amendment can be found, among other places, in the specification at paragraph 0039 and Figure 3.

As discussed above, the Office Action states that Bachner does not teach or suggest deleting data elements after the replication. Furthermore, Applicants assert that Pollard does not teach or suggest retaining the data elements on the archival system while deleting the data elements on other communication nodes in the communication system. In fact, Pollard teaches away from this deletion process recited in claim 1 since it would create an unsynchronized state between the host computer (archival system) and the handheld remote computer (other communication nodes).

Consequently, Applicants respectfully request that claim 1 be amended as proposed and the 35 U.S.C. § 103 obviousness rejection of claim 1 be withdrawn because the references Bachner and Pollard, alone or combined, do not teach or suggest all the claim limitations recited in claim 1.

Regarding claims 2-11, these claims depend from claim 1, which is allowable. Therefore, at least by virtue of their dependence from an allowable claim, claims 2-11 are allowable and Applicants respectfully request that the 35 U.S.C. § 103 obviousness rejection of these claims be withdrawn.

Regarding claim 19, Applicants propose to amend claim 19 in a manner similar to the proposed amendment to claim 1. As a result, the analysis present above with respect to claim 1 is equally applicable to claim 19. Therefore, Applicants respectfully request that the 35 U.S.C. § 103 obviousness rejection of claim 19 be withdrawn.

Regarding claims 21 and 23-25, these claims depend from claim 19, which is allowable. Therefore, at least by virtue of their dependence from an allowable claim, claims 21 and 23-25 are allowable and Applicants respectfully request that the 35 U.S.C. § 103 obviousness rejection of these claims be withdrawn.

Regarding claim 29, in responding to the previous amendment, the Examiner states in the

present Office Action that:

"It is being interpreted that the communication device nodes are privileged, is within the communication range, and therefore, formed a dynamic network and Bachner discloses Bluetooth technology provide data transfer when the two nodes are in fact, within range, refer to 0027, Lines 16, and 0035, Lines 20-31, so the nodes that are within range are connected on the network, if not, then it is disconnected."

The Examiner seems to be saying that if the nodes are within communication range then they are privileged. In other words, the Examiner seems to be interpreting "privileged" as "able to communicate." However, the element recited in claim 29 is "privileged for data replication," not privileged for communication. In claim 29, a dynamic network is created if the communication nodes are within range. Then, claim 29 determines whether the communication nodes have a data replication privilege. To emphasize this distinction, Applicants propose to amend claim 29 to include "determining whether the first and second communication nodes are privileged for a data replication after the dynamic network has been created." This amendment makes clear that the communication ability and the check for data replication privilege are separate and that the data replication privilege occurs after communication between the nodes is established.

This process of connecting then checking for data replication privilege is supported by the specification stating:

"Decision block 86 determines whether or not the communication nodes of the dynamic LAN created in step 82 are privileged for data replication. A communication node is found to be privileged upon identification and authentication. If one or more communication nodes of the dynamic LAN are not privileged, execution proceeds to step 88 with respect to the non-privileged communication node/nodes in order to disconnect the non-privileged communication node/nodes from the dynamic LAN. Alternatively, execution proceeds to step 90 for any two or more communication nodes that are privileged for data replication." (Paragraph 0045).

Furthermore, Applicants respectfully disagree that Bachner teaches or suggests the element, "if the first and second communication nodes are not determined to be privileged for the data replication, **disconnecting** the dynamic network."

The Examiner says that if the nodes are not within range then they are disconnected. The Examiner is seemingly implying that there exists a state of disconnection when the nodes are not in communication range. However, that is not what claim 29 recites. Claim 29 recites the

positive act of disconnecting the dynamic network when communication is already established. In other words, the disconnecting occurs specifically because a data replication privilege is not present, not because a communication ability is not present.

In addition, Applicants can find no description in Pollard of disconnecting the dynamic network if the first and second communication nodes are not determined to be privileged.

Consequently, Applicants respectfully request that claim 29 be amended as proposed and the 35 U.S.C. § 103 obviousness rejection of claim 29 be withdrawn because the references Bachner and Pollard, alone or combined, do not teach or suggest all the claim limitations recited in claim 1.

Regarding claims 30 and 31, these claims depend from claim 29, which is allowable. Therefore, at least by virtue of their dependence from an allowable claim, claims 30 and 31 are allowable and Applicants respectfully request that the 35 U.S.C. § 103 obviousness rejection of these claims be withdrawn.

Regarding claims 36-38, Applicants propose to cancel these claims.

Obviousness Rejection Based on U.S. Patent Application Publication No. 2007/0055762 A1 to Bachner, III et al. in view of U.S. Patent No. 6,549,917 to Pollard in further view of U.S. Patent Application Publication No. 2004/0179511 A1 to Kizu et al.

Claims 12 through 18, 26 through 28, 32 through 35, 39, 40 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bachner, III et al. (U.S. Patent Application Publication No. 2007/0055762 A1) in view of Pollard (U.S. Patent No. 6,549,917) in further view of Kizu et al. (U.S. Patent Application Publication No. 2004/0179511 A1). Applicants respectfully traverse this rejection, as hereinafter set forth.

Regarding claims 12-18, these claims depend from claim 1, which is allowable. Therefore, at least by virtue of their dependence from an allowable claim, claims 12-18 are allowable and Applicants respectfully request that the 35 U.S.C. § 103 obviousness rejection of these claims be withdrawn.

Regarding claims 26-28, these claims depend from claim 19, which is allowable. Therefore, at least by virtue of their dependence from an allowable claim, claims 26-28 are allowable and Applicants respectfully request that the 35 U.S.C. § 103 obviousness rejection of these claims be withdrawn.

Regarding claims 32-35, these claims depend from claim 29, which is allowable. Therefore, at least by virtue of their dependence from an allowable claim, claims 32-35 are allowable and Applicants respectfully request that the 35 U.S.C. § 103 obviousness rejection of these claims be withdrawn.

Regarding claims 39-41, Applicants propose to cancel these claims.

New Claims

To replace canceled claims 36-41, Applicants propose to add new independent claim 42 and dependent claims 43-47 depending from independent claim 42. These claims recite much of the same subject matter recited in claims 36-41 as well as claims 1-19, 21, and 23-35, but in a different manner to emphasize the means by which data is moved from an initiating node to an archival node through various intermediate nodes depending on whether communication between the communication nodes is available.

Support for these new claims can be found in the existing claims, as well as the specification and drawings at many locations. Some example locations are listed below for the various elements of the claims.

Support for the utilizing element of claim 42 can be found, among other places, in FIGS. 4A-4G showing the various communication nodes and paragraphs 0050-0052 discussing an exemplary embodiment including different types of communication nodes.

Support for the activating element of claim 42 can be found, among other places, at paragraphs 0043-0044 and elements 80, 82, and 84 of FIG. 3.

Support for the element of “employing an opportunistic data transfer” in claim 42 can be found, among other places, in claims 1 and 19, and paragraphs 0038-0041.

Support for the element of “continuing the activating” in claim 42 can be found, among other places, at FIGS. 4A-4G and the specifications discussion thereof for showing how data may

be transferred to different communication nodes when they are in communication range.

Support for the elements “generating, at the archival node, a delete command,” “propagating the delete command,” “deleting the data elements at the at least one intermediate node,” and “deleting the data elements at the at least one initiating node,” in claim 42 can be found, among other places at paragraphs 0046-0048 of the specification, and elements 94, 96, and 98 of FIG. 3.

ENTRY OF AMENDMENTS

The proposed amendments to claims 1, 13, 19, 24, and 29, as well as new claims 42-47 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application. Further, Applicants believe the amendments do not raise new issues or require a further search. Finally, if the Examiner determines that the amendments do not place the application in condition for allowance, entry is respectfully requested upon filing of a Notice of Appeal herein.

CONCLUSION

Claims 1-19, 21, 22-35, and 42-47 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicants’ undersigned attorney.

Respectfully submitted,

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